than a bare expression of his opinion, and the learned Magistrate who had the documents in front of him, after hearing the witness describe how a staking slip is made out by the staker and how a schedule is compiled by the collector from the staking slips, was "satisfied from the evidence of P.W. 3 that the documents found in possession of the appellants related to a Chap Ji Ki lottery".

I find it impossible to distinguish this case from the decision of this Court in *Rex v. Soh Eng Chiang*[1]. Indeed this case appears to be stronger because from the report of that case it would appear that the only exhibit was a schedule of stakes. In this case the learned Magistrate had before him :—

(1) an explanation that in the operation of a Chap Ji Ki lottery it is the business of the collector to compile a schedule from the staking slips which he receives;

(2) 4 documents each containing 144 squares, which the witness, having explained that there were 144 chances, said were schedules;

(3) 50 slips of paper (exhibit P. 3) with writing on them, which were found on the third accused, which the witness said were staking slips.

Thus the learned Magistrate, from his own examination of the documents in Exhibit P. 4, was in a position to see that they appeared to be schedules compiled from staking slips in the manner which had been described, and this opinion was confirmed by the expert. This is very different from accepting the bare opinion of an expert without understanding the reasons which have led him to form his opinion.

The appeal must be dismissed.

Appeal dismissed.

BANK OF CHINA v. LAM TAI CHENG & 2 ORS.

[Orig. Civ. Juris. (Spenser-Wilkinson, J.) July 27, 1951]

[Singapore — Suit No. 299 of 1950]

Debtor and Creditor (Occupation Period) Ordinance, 1949 s. 4 sub-ss. (1) and (2) — Burden of proof — "Duress or Coercion".

In this case the Bank of China, the plaintiffs in this suit sought to recover from the defendants the balance of a prewar overdraft with interest thereon. Various payments to account of this overdraft were made during the Japanese Occupation in occupation currency by the defendants to the Japanese Liquidator of the Bank concluding with the payment of $11,445.91 in purported payment of the balance then outstanding.

At the trial the Counsel for the plaintiff submitted that as the payments were admitted in the pleadings the onus was on the defendants and they should therefore begin. The Counsel for the defendants accepted this position and opened his case.

Held, that the plaintiffs in order to succeed under section 4(2)(c) must satisfy the Court that the payment was not caused by "duress or coercion" and in this case the plaintiffs have not discharged the onus of satisfying the Court that there was no duress or coercion.

Case referred to :—

(1) *Abdul Hameed Mohamed Ibrahim & Co. v. A. M. S. Nainam Sahib & Co* (1951) M.L.J. 103; 2 M.L.R. 71.

CIVIL SUIT.

C. F. J. Ess for the plaintiffs.

Dr. C. H. Withers-Payne for the defendants.

The facts appear sufficiently from the judgment.

Cur. Adv. Vult.

Spenser-Wilkinson, J. : — In this case the Bank of China seeks to recover from the defendants the balance of a prewar overdraft with interest thereon. Various payments to account of this overdraft were made during the Japanese Occupation in Occupation Currency by the defendants to the Japanese Liquidator of the Bank concluding with a payment of $11,445.91 in purported payment of the balance then outstanding. The issue between the parties is whether or not these payments are or are not to be revalued in accordance with the provisions of the Debtor and Creditor (Occupation Period) Ordinance 1949. If there is no revaluation then the debt has been discharged and the plaintiffs' claim must fail; if, however, the payments are revalued, there will be a substantial balance recoverable by the plaintiffs.

Before the war the three defendants were partners carrying on the business of a pawnshop called the Thye Ann Pawnshop at 297 South Bridge Road. Some of the defendants were also partners in a provision and liquor business called Chop Foh Mee in New Bridge Road. On the entry of the Japanese into Singapore in February 1942 the Thye Ann Pawnshop was closed down. Soon afterwards, however, the Japanese sent for the partners and told them to reopen their business. On the 30th of June 1942, after obtaining permission from the appropriate Japanese authorities, the pawnshop went into liquidation. The shop was closed and from then until November the debts of the firm were gradually paid off with the exception of the overdraft to the Bank of China.

The Bank of China, in company with many other Banks, was declared by the Japanese to be an Enemy Bank and a Liquidation Officer was appointed. Some time in March 1943 the Liquidation Officer began to collect moneys due to the Bank and an arrangement

was made by the defendants with the Japanese authorities whereby the defendants began to pay off their overdraft by instalments of $700 per month. In September 1943 the amount of these instalments was increased to $1,000 a month and on the 3rd of February 1944 the balance of $11,445.91 was paid off, a slight adjustment having been made with regard to interest in favour of the defendants.

There is no dispute between the parties as to the times and amounts of these payments but the vital question in the case is how these payments came to be made — whether they were voluntary payments or payments made under duress or coercion wthin the meaning of the Debtor and Creditor (Occupation Period) Ordinance 1949.

Owing to the defendants being somewhat unpunctual in their payments numerous letters were written by the Japanese Liquidation Officer to the defendants demanding payment of instalments. Letters dated the 8th of April, 9th of July and 14 of July 1943 were written demanding payment of $700 and letters dated the 11th October, 10th November and 10th December 1943 were written demanding payment of $1,000. With the exception of the first letter dated 8th April, these letters were couched in the same form and read as follows :—

"This is to remind you that the above amount was due for payment by you on the 7th July according to the agreement reached between you and us. We need hardly stress that we expect all debtors to meet their obligations promptly on due dates and you are hereby requested to effect payment of the above **immediately upon receipt of this letter** without fail.

Trusting that you will give this matter your **immediate** attention.

Yours faithfully,
Chop.

Liquidation Officer,
Gunsei Kanbu Tekisan Kanri Ka,
c/o The Bank of Taiwan, Ltd.,
Syonan."

Each of the letters above referred to resulted in a payment by the defendants to the Liquidation Officer within a few days except that of the 9th of July 1943 which was followed by a second letter dated the 14th resulting in a payment of $1,000 on the 15th July.

In addition to these letters there are three documents relating to the payment of the overdraft in question. The first relates to the payments of $700 a month and reads as follows :—

"Interview with Mr. Hattori. 27th March, 2603.
Thye An Tong.

Mr. Lam Nai Chang came for interview and stated that their shop was liquidated last year and loss of $50,000.00. They have to pay off interest of $20,000.00 to customers and have overdrafts of about $10,000.00 with Sze Hai Tong Bank and $30,000.00 more against mortgage with Oversea Chinese Bank. They agreed to pay off overdraft by instalments of $700.00 every month beginning from 7th April, 2603."

The second relates to the increase of the instalments to $1,000 per month, and is simply a confirmation of an agreement to pay this amount from October 1943 monthly. The copy at page 6 of the agreed bundle of documents omits the signature, but the original was produced and is chopped and signed by the first defendant. A somewhat similar document referring to $1,500 instead of $1,000 appears at the foot of a letter dated 7th September 1943 at page 21 of the bundle of documents but this document was never signed by the defendants and the blank form is still in their files.

Finally there is a note purporting to be recorded by Y. F. Tai (who gave evidence for the plaintiffs) as follows :—

19th January 2604.

Customer's Name: Thye An Tong.

Subject. Full settlement of the account, requesting reduction of interest. This shop was closed for business on 31st December, 2602 as announced in Syonan Daily News dated 3rd July, 2602. The proprietor died and his eldest son came for the arrangement. His son is leaving for some other place and he likes to liquidate his shop.

Arrangements made: With special consideration of the closing of the pawnshop, we allow them to pay the full settlement of the principal and interest calculated to the 30th June, 2603, within this month.

Recorded by Y. F. Tai."

The wording of these two notes of interview is interesting in the light of the other evidence. If the facts set out in the note of the 27th March 1943 were in fact true it seems somewhat surprising that the defendants were in a position to offer any instalments at all after losing $50,000 and being left with debts amounting to $60,000 The evidence of the defendants as to this, however, is that all their debts had been paid off by November 1942. Again the story told in the note dated the 19th January 1944 is peculiar. If the shop

was closed on the 31st December as stated why does the son like "to liquidate his shop" in January 1944? Here again if the story which had been recorded in March 1943 had been correct it seems incredible that the defendants should be able to offer to pay over $11,000 in January 1944 unless they had had a windfall. The evidence of the defendants, which on this point is uncontradicted and supported by documents, is that the money was found, after great difficulty, by means of an overdraft raised on the credit of Chop Foh Mee the associated liquor business; and that there was no question of offering to pay a sum which they neither possessed, nor could easily find.

The evidence of Mr. Tai Yun Feng, now Assistant Manager of the plaintiff bank, who recorded these notes of interview at the time was to the effect that all these documents referred to interviews between the first defendant alone and a Japanese Officer called Hattori who was the Chief Liquidation Officer dealing with liquidated banks in an office in the Bank of Taiwan building. He stated that in each case the arrangement was reached by agreement and that no threats of any kind were used. In particular, with regard to the final payment of the balance, he stated that the first defendant came and stated he was leaving for China and wanted to pay off the overdraft and asked for a reduction of interest.

The first defendant being dead, the second and third defendants both gave evidence which at first sight is in conflict with the evidence of the plaintiffs' witness. In the first place they insist that all three defendants went to see the Japanese officer on each occasion except the last when the third defendant being away only the first and second defendant were present. The gist of their evidence was that towards the end of July 1943 they were sent for by the Japanese Custodian of Enemy Property, were told to pay off the overdraft, and were then given three days to make some proposition for payment. They were again sent for in March 1943 and after some discussion were told to pay instalments of $700 a month although they had explained that they had no money and could only make payment after realising certain jewellery which they still had but which was difficult to dispose of. In September the same year they were again sent for and told to pay $1,500 a month instead of $700 but after protests that they were unable to do this the amount was reduced from $1,500 to $1,000 per month. Finally in January 1944 they were again sent for and told that they must pay off the whole balance and were given one week to do this. Both these defendants assert that they were threatened that if they did not comply they would be sent to the Kempetai. There is a discrepancy between the second and third defendants as to whether the first threat was made at the first or at the second interview. As already stated the third defendant was not present at the last interview as he had at that time left Singapore for Sumatra.

Both defendants were quite positive that the first several interviews which they described took place, not at the Bank of Taiwan, but in the Supreme Court Building where was situated the head office of the Japanese Custodian of Enemy Property who was an officer superior to the Liquidation Officer at the Bank of Taiwan. It will be seen, therefore, that their evidence is not really in conflict with that of the plaintiffs' witness who described interviews which took place at the Bank of Taiwan.

There is some doubt with regard to the final interview when payment of the whole balance was demanded. The second defendant stated that this took place at the Bank of Taiwan. It is possible however that there were two interviews at about this time — one at which the first and second defendants were present and were told that they must pay; and another when the first defendant interviewed Hattori and obtained from him the slight reduction in the interest, which I have already referred to.

All the witnesses appeared to me to be speaking the truth to the best of their recollection though I am inclined to think that Mr. Tai's evidence was based rather upon the written records of the interviews than upon his actual recollection of the event. He knew the first defendant and must, I think, have known quite well at the time that the statement he recorded on the 19th January 1944 that "The proprietor died and his eldest son came for the arrangement" was nonsense. However this may be, it is not surprising that there should be some discrepancies and inconsistencies now regarding interviews which took place as long ago as 1943 and early 1944. Such discrepancies as there were in the accounts given by the second and third defendants are largely accounted for by their obvious difference in temperament.

The documents taken at their face value certainly lend colour to the plaintiffs' case rather than to the defendants'. Yet, regarding the letters of demand, the fact that an order is couched in polite terms does not make it any the less an order if that is in fact its substance. It is common knowledge that the methods of the Japanese during the occupation of this country were often far from straight forward whilst on the other hand the Japanese often went to a good deal of trouble to preserve the appearance of legality in their transactions with the public. I am therefore not greatly impressed by the point made on behalf of the plaintiffs that none of the letters could possibly be described as threatening. Moreover it is to be observed that the letters in question originate not from the Supreme Court Building where the defendants alleged the threats were uttered but from the Great Eastern Life Building in Cecil Street.

With regard to the notes of interviews I am inclined to agree with the suggestion made by counsel for the defendants that these records were made as cover for the real transactions. Another possibility is that the first defendant, impelled by the threats of the Custodian in the Supreme Court Building, went to the Liquidation Officer at the Bank of Taiwan and told him whatever story he thought would be acceptable as an explanation of the offers he made. In either event, if the main lines of the defendants' evidence be accepted, it is clear that such duress or coercion as existed was brought to bear by the Japanese Custodian of Enemy Property at the Supreme Court so that any offers or payments which took place at the Bank of Taiwan were not necessarily free offers or voluntary payments even if they appeared to be such. The evidence of Mr. Tai as to the interviews at the Bank of Taiwan does not therefore assist on the question of duress or coercion, and there is no evidence to contradict the defendants' version of what took place in the Supreme Court Building.

It was suggested in argument before me that the defendants ought to have called a Mr. William Kow, now sub-manager of the Plaintiff Bank, whom they alleged to have been present at these various interviews. The defendants did subpoena one employee of the Bank, but he was clearly a hostile witness and his evidence was quite useless. The only impression I derived from the way he gave evidence was that he probably had something to hide. If the defendants' story was in fact untrue it would have been easy for the plaintiffs to call their own sub-manager to contradict it. Moreover, in view of what I am about to say as to the burden of proof I am satisfied that it was the plaintiffs rather than the defendants who should have called this witness.

On the whole I see no reason to disbelieve the evidence of the defendants that they were in fact threatened by some officer in the head office of the Japanese Custodian of Enemy Property and that these threats operated on their minds throughout the relevant period. The question I then have to consider is whether such threats amounted to duress or coercion within the meaning of section 4 of the Debtor and Creditor (Occupation Period) Ordinance. This question brings me to the subject of the burden of proof. At the beginning of the hearing Mr. Ess for the plaintiffs submitted that as the payments were admitted in the pleadings the onus was on the defendants and that they should therefore begin. Dr. Withers-Payne for the defendants accepted this position and opened his case. At that stage of the proceedings the decision of the Court of Appeal of the Federation in *Abdul Hameed Mohamed Ibrahim & Co. v. A. M. S. Nainam Sahib & Co.*[1] was not known to either counsel or to myself, the report not having reached the Colony until some time in July. At a later stage of the proceedings this decision was mentioned and counsel agreed that in the circumstances the best course would be for the hearing to proceed as arranged and that the question of the burden of proof should be discussed latter. Although the decision in that case proceeded upon a consideration of sub-section (2) (b) of section 4 of the Ordinance, in my opinion the principles there laid down must apply equally to sub-section (2) (c) which is the paragraph relevant to the facts of the case before me.

Under sub-section (1) of section 4 of the Ordinance a payment made during the Occupation Period in Occupation Currency in respect of a pre-occupation debt is a valid discharge of the debt to the extent of the face value of the payment unless such payment comes within the provisions of sub-section (2). The relevant part of sub-section (2) reads as follows :—

"(2) In any case —

* * *

(c) where such payment was made in occupation currency to a Custodian or liquidation officer in respect of a pre-occupation capital debt exceeding two hundred and fifty dollars in amount except where payment as aforesaid was caused by duress or coercion;

such payment shall be revalued in accordance with the scale set out in the Schedule to this Ordinance and shall be a valid discharge of such debt only to the extent of such revaluation."

The expression "duress or coercion" is defined for the purposes of section 4 in sub-section (5) which, insofar as it is relevant to the question before me, reads as follows :—

"(5) For the purposes of this section "duress or coercion" means force, injury or detriment applied or caused, or threat of force, injury or detriment offered, to the debtor by the creditor or his agent or an official of, or person acting on behalf of, the Occupying Power, which, in the opinion of the Court, was of such a nature as to render a payment an involuntary act.

In this subsection "threat of force, injury or detriment" includes a threat to inform directly or indirectly an official of the Occupying Power of the refusal of the debtor to make payment."

In view of the provisions of sub-section (1) I have no doubt that the plantiffs, in order to succeed under sub-section (2) (c), must satisfy the Court that the payment was not caused by duress or coercion. The definition of "duress or coercion" for the purposes of section 4 of the Ordinance is very wide. It includes a threat of detriment offered to a debtor which in the opinion of the Court is of such a nature as to render the payment an involuntary act, and a "threat of force, injury or detriment" is defined as including a threat to inform directly or indirectly an official of the Occupying Power of the refusal of the debtor to make payment. Dr. Withers-Payne contended that if the mere threat to inform an official of the refusal of the debtor to pay satisfied the definition, then *a fortiori* a demand made by the official himself must come within the definition. There is great force in this argument, although I am not prepared to accept it as a general proposition by reason of the words "which in the opinion of the Court was of such a nature" in the earlier part of the sub-section. It seems to me to be clear from those words that each case must be considered in the light of the particular circumstances. Nevertheless, in view of the fact that a threat to inform an official is itself duress or coercion, where a demand is made by such an official, it will not need much more to satisfy the Court that it is of such a nature as to render the payment involuntary.

I have no doubt that in the circumstances of the Japanese Occupation a threat by any Japanese official to send a debtor to the Kempetai was a very dire and terrifying threat; and although it is not strictly necessary for me to go so far as to decide whether, if the burden of proof had been upon the defendants, they would have succeeded in establishing a threat of detriment of such a nature as to render their payments involuntary acts, I am inclined to think that they did. The plaintiffs are thus very far from having discharged the onus of satisfying me that there was no duress or coercion. Bearing in mind what has been said above as to demands by Japanese officials and bearing in mind also that the general burden is on the plaintiff to bring himself within the provisions of sub-section (2) of the section, I hold that the plaintiffs in this case have not established, by a preponderance of evidence in their favour, that no duress or coercion was brought to bear upon the defendants and their claim must therefore fail.

Action dismissed.

BUI DIN LAN v. SIM KIM ENG

[App. Civ. Juris. (Abbott, J.) July 12, 1951]

[Malacca — Civil Appeal No. 2 of 1951]

Landlord and Tenant — Control of Rent Ordinance, 1948, s. 12 — Rent in arrears for more than fourteen days — Waiver of past irregularities in payment.

In this case the appellant (landlord) claimed possession on the ground that the respondent (tenant) was in arrears with the rent for the month of August 1950, beyond the fourteen-day-period. The rent for August